



NOTICE OF TEXT

[Authority G.S. 150B-21.2(c)]

OAH USE ONLY

VOLUME: 38

ISSUE: 23

CHECK APPROPRIATE BOX:

☐
☒
☐

Notice with a scheduled hearing

Notice without a scheduled hearing

Republication of text. Complete the following cite for the volume and issue of previous publication, as well as blocks 1 - 4 and 7 - 14. If a hearing is scheduled, complete block 5.

Previous publication of text was published in Volume: Issue:

1. Rule-Making Agency: Local Governmental Employees' Retirement System Board of Trustees

2. Link to agency website pursuant to G.S. 150B-19.1(c): <https://www.nctreasurer.com/about/transparency/commitment-transparency/nc-administrative-code-rules>

3. Proposed Action -- Check the appropriate box(es) and list rule citation(s) beside proposed action:

☒ ADOPTION: 20 NCAC 02C .0213, .0505

☒ AMENDMENT: 20 NCAC 02C .0403

☐ REPEAL:

☐ READOPTION with substantive changes:

☐ READOPTION without substantive changes:

☐ REPEAL through READOPTION:

4. Proposed effective date: 01/01/2025

5. Is a public hearing planned? No

If yes:

Date

Time

Location

6. If no public hearing is scheduled, provide instructions on how to demand a public hearing:

Submit a written request for public hearing within 15 days after publication of the Notice of Text to: Dept of State Treasurer, Attn: Rulemaking Coordinator, 3200 Atlantic Avenue, Raleigh, NC 27604 or DST.NCAC@nctreasurer.com

7. Explain Reason For Proposed Rule(s):

20 NCAC 02C .0213 - The proposed rule describes what information is required to be submitted by an employing unit that will constitute "clear and convincing evidence" of the employing unit's intention to hire an employee in a membership-eligible position, in order to extend the employing unit's inactive status within the Local Governmental Employees' Retirement System.

20 NCAC 02C .0403 - The Local Governmental Employees' Retirement System (LGERS) is a governmental pension plan under Section 414(d) of the Internal Revenue Code. G.S. 128-21(11) defines the employing units potentially eligible to participate in LGERS. Participating employing units make contributions to LGERS each month associated with regular payroll, and also may be required to make additional contributions to LGERS for various reasons under law. This proposed amendment seeks to clarify that if LGERS must repay or reimburse an employing unit for any reason, the refund will occur in the form of a credit to be applied against the employing unit's future contribution requirements to LGERS.

20 NCAC 02C .0505 - This proposed rule seeks to clarify the Local Governmental Employees' Retirement System (LGERS) Board of Trustees' discretionary ability under G.S. 128-27. Under G.S. 128-27 the LGERS Board may require any disability beneficiary under the age of 60 to undergo a medical examination once each year during the first five years of the disability allowance, and once every three years thereafter. Pursuant to the proposed rule, and within the Board's discretion, the LGERS Board will not require such medical re-examinations of disability retirees who have provided the Retirement System Division with documentation of their approval for primary federal Social Security disability benefits.

8. Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or email. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Rule(s) is automatically subject to legislative review. Cite statutory reference:

9. The person to whom written comments may be submitted on the proposed rule(s):

Name: [Elizabeth Hawley](#)
Address: [3200 Atlantic Avenue](#)
[Raleigh, NC 27604](#)

Phone (optional):
Fax (optional):
EMail (optional) DST.NCAC@nctreasurer.com

10. Comment Period Ends: 08/02/2024**11. Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.**

[State funds affected](#)
[Local funds affected](#)
[Approved by OSBM](#)

12. Rule-making Coordinator:

Name: [Elizabeth Hawley](#)
[919-814-3812](#)
elizabeth.hawley@nctreasurer.com

Agency contact, if any:

Name: [Timothy Melton](#)
Phone: [919-814-4186](#)
Email: timothy.melton@nctreasurer.com

13. The Agency formally proposed the text of this rule(s) on

Date: [04/25/2024](#)

20 NCAC 02C .0213 is proposed for adoption as follows:

20 NCAC 02C .0213 INACTIVE EMPLOYER EXTENSION REQUEST

“Clear and Convincing Evidence” means all of the following:

- (1) Job Description(s) of vacant position(s) requiring membership in the Local Governmental Employees’ Retirement System.
- (2) The date the position is expected to be filled or status of recruitment.
- (3) Confirmation that the position(s) are funded in the Employer’s most recent budget.
- (4) Statement that the Employer will continue to issue financial statements recognizing its share of the Local Governmental Employees’ Retirement System costs, if any, under governmental accounting standards.

*History Note: Authority G.S. 128-23.1(d); 128-28(g);
Eff. MONTH DD, YYYY*

20 NCAC 02C .0403 is proposed for amendment as follows:

20 NCAC 02C .0403 REFUNDS

(a) The Retirement System will make no refunds of employer contributions, paid into the Pension Accumulation Fund by the employer in the amount equal to a percentage of the actual compensation of each member, in cases of erroneous employee deductions except those which are corrected by the employing unit on a subsequent payroll within the calendar year in which the errors occur.

(b) Notwithstanding Paragraph (a) of this Rule, an error occurring in December may be corrected, and the associated employer contribution be refunded in the form of a credit toward future required employer contributions, by the employer's submission of a revised payroll report for the correct amount before January 31 of the following year.

(c) If an employer makes an additional contribution to the pension accumulation fund as a result of the contribution-based benefit cap and the Retirement System receives information which alters the calculation of the retirement benefit used to determine the contribution under the provisions of G.S. 128-30(g)(2)b., any contribution not required based on the new information will be refunded to the employer in the form of a credit toward future required employer contributions.

(d) If an Employer makes a contribution to the pension accumulation fund that was not required or the Retirement Systems Division must repay or reimburse an employer for any reason, then the funds shall be refunded or paid in the form of a credit to be used toward future required employer contributions.

History Note: Authority G.S. 128-22; 128-28(g); 128-30(g);

Eff. February 1, 1976;

Readopted Eff. MONTH DD, YYYY; March 1, 2023; September 21, 1977.

20 NCAC 02C .0505 is proposed for adoption as follows:

20 NCAC 02C .0505 LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM
DISABILITY RETIREMENT REEXAMINATION

(a) A beneficiary in receipt of disability retirement benefits under G.S. 128-27(c), who has submitted to the Retirement System a letter from the Social Security Administration confirming eligibility for primary Social Security disability benefits, shall not be subject to medical reexamination set forth in G.S. 128-27(e).

History Note: Authority G.S. 128-27(e); 128-28(g);
Eff. MONTH DD, YYYY